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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6184 OF 2005

Balu Bahiru Dalvi ... Petitioner

Vs.

Dnyaneshwar Sakharam Kanade & Ors. ... Respondents

Mr. S.D. Patil for the petitioner.

None for the respondents.

CORAM: SMT. RANJANA DESAI, J.

DATED: 19TH SEPTEMBER, 2005.

P.C.:-

1. The petitioner is original defendant 2 in Special Civil Suit No.278 of 2004 pending on the file of the Civil Judge, Senior Division, Nashik. The suit is filed for injunction. The plaintiff also filed an application (Ex-5) for temporary injunction. It is the case of the petitioner that he filed a detailed affidavit in reply to the application (Ex-5). It is the petitioner's further case that the said application (Ex-5) is pending. It appears that thereafter, the plaintiff filed an application (Ex-26) for the same relief. To that application, the petitioner filed an affidavit in reply. However, according to the petitioner, the said reply is a cryptic reply and not in detail like the reply filed in application (Ex-5). The grievance of the petitioner is that though the application (Ex-5) is pending, the trial

court disposed of the application (Ex-26) on 6/11/2004 and defendant 2 i.e. the petitioner was temporarily restrained from disturbing the possession of the plaintiff. Thereafter, the petitioner filed an application (Ex-43) stating therein that the application (Ex-5) filed by the plaintiff for the same relief is still pending, which ought to have been disposed of earlier and, therefore, it may be disposed of and the order passed by the trial court on the application (Ex-26) may be made dependant on order passed on application (Ex-5) and till the suit is decided, the order on application (Ex-26) be cancelled. The said application was rejected by the trial court and, hence, this writ petition.

2. I have heard the learned counsel for the petitioner. He contended that it was not open to the trial court to decide the application (Ex-26) when the earlier application (Ex-5) was pending for the same relief. He submitted that the petitioner is seriously prejudiced as he has filed a detailed reply to the application (Ex-5) whereas the reply to the application (Ex-26) was cryptic. He also contended that the trial court has wrongly observed that his application (Ex-43) was for cancellation of the order passed on the application (Ex-26). He contended that the trial court has not properly appreciated the prayers made in the application (Ex-43).

3. If application (Ex-5) and application (Ex-26) contain same prayers, the learned judge ought to have disposed them of together. However, admittedly, the petitioner did not challenge the order passed on Ex-26 in the higher court. He only applied for disposal of application (Ex-5). He has, in effect, sought review of order passed on application (Ex-26). The trial court has observed that it has considered all the documents filed by the parties and has given full opportunity of hearing to the parties and then passed the order on application (Ex-26). I have no reason to disbelieve him. There is, therefore, no reason to interfere with the impugned order. However, if the trial court has not disposed of application (Ex-5) and the petitioner has filed a detailed reply to the same, the trial court should consider it independently and pass orders in accordance with law thereon after hearing the parties as it is obvious that no application can be kept pending without passing orders thereon. It is clarified that this court has not expressed any opinion on the contents of the said application (Ex-5).

With these observations, the petition is disposed of.

(SMT. RANJANA DESAI, J.)